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Sir *William Billers*, Knt. *John Lawton* and *Nicholas Paxton*, Eſqrs. Truſtees for certain Creditors of the Governor and Company of Undertakers for raiſing the *Thames Water* in *York Buildings* } Appellants.

His Grace *Edward* Duke of *Norfolk*, Sir *Robert Sutton*, and Sir *Robert Clifton*, Knights of the Bath; Sir *Alexander Murray*, and Sir *Archibald Grant*, Baronets; *George Wade*, Eſq. Lieutenant General of his MAJESTY's Forces, --- and others } Reſpondts.

The CASE of the APPELLANTS.

THE *Governor* and *Company of Undertakers for raiſing the Thames Water in York Buildings*, having contracted large Debts for Purchaſing the forfeited Eſtates in *England* and *Scotland*, and for other neceſſary Occaſions; and foreſeeing that great Part of theſe Debts would become due on or before the 25th of *March* 1732, and that they would not then be poſſeſſed of Money ſufficient to anſwer theſe Demands, and carry on their Works, they found it neceſſary that the Sum of 100000 *l.* ſhould be raiſed for theſe Purpoſes: And as there was Reaſon to apprehend that ſo large a Sum could not be raiſed upon perſonal Security, the Company did upon the 13th Day of *October* 1731, publiſh Propoſals for raiſing the ſaid Sum by Subſcription, the Conditions of which were, *That the Subſcribers ſhould, within the Times thereby limitted, advance the Sums by them Subſcribed, either in Money or in the Company's outſtanding Bonds or Receipts*, commonly known by the Name of *Slips*, (by which *Slips* the Company were bound to grant Bonds for the ſeveral Sums in ſuch *Receipts* or *Slips* mentioned reſpectively) *and that the Company ſhould iſſue new Bonds for the ſeveral Sums ſo ſubſcribed and advanced, payable the 25th Day of* March 1735, *with Intereſt payable half yearly; and alſo make over their Eſtates in* Northumberland, *together with the Reverſion of their Eſtates in* Scotland, *(ſubject to the Payment of the Annuities charged upon them) to* Truſtees *for the behoof of ſuch Subſcribers.*

Subſcription Propoſals publiſhed 13th of *Oct.* 1731.

In Conſequence of this Propoſal, the Company executed a *Deed of Indenture of Bargain and Sale*, by which, reciting the Incumbrances they were ſubject to by *Bonds* and *Slips* ſtanding out againſt them, and the Propoſals publiſhed for raiſing Money to diſcharge theſe Incumbrances, and referring alſo to the Subſcriptions made, or to be made, upon the Faith of theſe Propoſals, annexed to the ſaid Deed, *They conveyed all their Eſtates*, viz. the Eſtate of *Widrington* in *Northumberland*, and the Eſtates of *Winton*, *Killſyth*, *Panmure*, *Fingaſk*, *Pitcairn*, *Eaſtreſtoun*, *Linlithgow*, *Mariſhall* and *Southeſk* in *Scotland*, to the Appellants *in Truſt for the behoof of the Subſcribers for the ſaid* 100000 *l.* according to the Conditions of the ſaid Propoſal, *with proper Covenants for further Aſſurance.*---- And this Deed of Indenture was duly recorded in *Scotland*, upon the 20th Day of *June* following.

Indenture of Bargain and Sale, executed 18th of *Jan.* 1731-2.

and recorded 20th of *June* 1732.

Upon the Faith of the ſaid Propoſals and Deed of Truſt, the Sum of 72785 *l.* Part of the ſaid 100000 *l.* was Subſcribed for, on, or ſoon after, the ſaid 18th Day of *January* following, and the Company being fully ſatisfied, that this Propoſal would be accepted of when the proper Meaſures were taken to ſubject their real Eſtates to this Incumbrance, they directed their *Secretary* to Subſcribe for the remaining Sum of 27215 *l. for the behoof of ſuch Perſons as ſhould afterward agree to advance Money upon the propoſed Security.*

This Subſcription made by the *Secretary*, was in purſuance of an Order of *one General Court*, and was afterwards approved of *by another*; and the ſaid Sum of 27215 *l.* ſo Subſcribed, as well as the other Sum of 72785 *l.* Subſcribed by other Perſons ſeverally, being advanced to the Company, *They*, according to the Power *granted by their Charter*, and *confirmed by Act of Parliament*, iſſued ſeveral Bonds bearing Date the 25th of *March* 1732, for 100 *l.* each, amounting in the whole to the ſaid Sum of 100000 *l.* payable to *Robert Reid*, one of the Company's Servants, his Executors, Adminiſtrators or Aſſigns, by Indorſement thereon, upon the 25th Day of *March* 1735, with Intereſt after the Rate of 5 *per Cent. per Annum*, payable half yearly --- Each Bond reciting alſo, that for further Security of the Sum therein contained, all the forfeited Eſtates purchaſed by the Company in *England* and *Scotland*, ſubject to the Payment of Annuities, *were veſted in Truſtees.*

Deed of Diſpoſition executed 25th of *Oct.* 1732.

In purſuance of the Covenant *for further Aſſurance* in the ſaid Deed of Truſt, and upon Demand made by the ſaid *Truſtees*, the Company did on the 25th of *October* 1732, Execute a Deed of Diſpoſition of theſe Eſtates, to the Appellants, *in Truſt for thoſe Creditors, who had Subſcribed and advanced the ſaid Sum of* 100000 *l. and in Security of the Sums due by the Company's Bonds iſſued to them ſeverally*---In Virtue of which Deed of Diſpoſition the Appellants were infeoft and ſeized, in the Months of *November* and *December* 1732, and their Infeoftments duly Regiſtered.

Leaſe of Mines made to the Company 31ſt of *July*, 1730.

The Reſpondents, who are Leſſees for a Term of Years of certain Lead Mines in the Eſtate of Sir *Alexander Murray*, in the Shire of *Argyle*, did on the 31ſt of *July* 1730, make a Leaſe of thoſe Mines to the ſaid Company for a Term of 25 Years, reſerving a yearly Rent of 3600 *l.*; for the better and more effectual ſecuring whereof, the ſaid Company became engaged to infeoft the Reſpondents in an annual Rent of 3600 *l.* to be levied during the Term, out of the Eſtates in *Scotland*, belonging to the ſaid Company, and gave a Power of Attorney for that Purpoſe.

Reſpondents Decree of Adjudication againſt the Comp. *Nov.* 1732.

Altho' the Tranſaction beeween the Bond Creditors and the Company was carryed on *in the moſt publick Manner*, and was in Agitation for near ſix Months, the Reſpondents did not think proper to take any Step for their own Security during the whole Time; but immediately after the Bonds were iſſued out, *viz.* the 11th of *April* 1732, They ſued out Letters of Inhibition againſt the Company, and in *November* following, obtained a Decree of Adjudication in *Scotland*, adjudging the Company's Eſtates to belong to them, 'till they were ſatisfied of certain Arrears of Rent, alledged to have been then due upon the ſaid Leaſe by the Company, and for their future Security: And they took Livery of Seiſin in the ſaid Eſtates, in the Years 1733, and 1734, ſeverally.

Reſpondent's Action.

But the Reſpondents being ſenſible that the Feoftment to the Appellants, was prior and preferable to the Feoftments obtained by themſelves, they brought an Action of Reduction, Improbation, and Declarator, before the Court of Seſſion in *Scotland*, againſt the Appellants, and againſt the Officers of State for his Majeſty's Intereſt, and againſt ſeveral other Perſons, *Annuitants, and other Creditors to the Company*, inſiſting that the Appellants and the other Defendants ſhould produce all Bonds, Diſpoſitions, Infeoftments and other Writings granted to them, or in their Power and Poſſeſſion with relation to the ſaid Eſtates, in order to have them ſet aſide for the Reaſons libelled, and in default of their being produced, that ſuch Deeds might be reduced, ſet aſide, and declared void, for not Production.

When

When this Action came on before the Lord Ordinary, it was pleaded for the Appellants, That the Titles and Writings under which they claimed, were already produced in another Action then depending in Court, and brought in the Names of *Fotherly Baker* and *Henry Strachey*, Creditors of the Company, for bringing the ſaid Eſtates to Sale: And that this Action of Reduction, Improbation and Declarator, ſhould therefore be conjoined with the other Action, and remitted to the Judge before whom that Action was to be try'd, which was accordingly granted; but afterwards recall'd by the Court upon an Application made for the Reſpondents.

The ſaid Action of Reduction Improbation and Declarator, being again brought on, a further Time was allowed to fifteen of the Defendants to produce the Securities under which they claimed their Demands againſt the Company; and no further Proceedings have ſince been had againſt them, but the Cauſe was heard *ex parte* as againſt the Appellants, and other ſix of the Defendants, who had no Title under the Truſt Infeoftment; and, by the Management of the Agents for the Reſpondents, a Decree of Certification was pronounced againſt the Appellants for not producing in this Suit their Deeds and Titles which were produced in another Suit, and were actually then remaining in Court: The Effect of which Decree would be, to void and ſet aſide their ſaid Deeds and Titles, which by Reaſon of their not being produced are *fictione juris*, and in Force of ſuch Decree, declared to be falſe and forged.

But an Application having been forthwith made for the Appellants to the Court, complaining of ſuch Proceedings, and the Appellants having alſo produced with their Petition, the ſaid Deed of Indenture of the 18th Day of *January* 1731-2, the ſaid Deed of Diſpoſition, and the Infeoftments taken in Conſequence thereof, the Court was pleaſed to reſtore the Appellants againſt the ſaid Decree with reſpect to the Writings then produced, *which were all that the Appellants were, or could be, poſſeſſed of*, to ſupport their Claim and Demand as Truſtees upon the Company's Eſtates.

Tho' according to the Courſe of the Court in ſuch Caſes, the Reſpondents ought to have proceeded againſt the other Defendants ſo far as to conclude them by the like Decree, with reſpect to ſuch Deeds and Titles as they were poſſeſſed of affecting theſe Eſtates, and which were not produced, becauſe it could not appear, or be known, *whether the ſaid other Defendants were, or were not, poſſeſſed of all or any of the Bonds iſſued for the ſaid* 100000 l. *ſubſcribed for, and ſecured by the ſaid Truſt Infeoftment*, yet the Reſpondents inſiſted againſt the Appellants *only*.

Reſpondent's Objections.

And the Cauſe being brought on to a Hearing before the Lord Ordinary, the Reſpondents objected to the Deed of Indenture, Diſpoſition and Infeoftment, made in Favour of the Appellants, upon ſeveral Heads, the moſt material of which were;

I. That to prove a real and valuable Conſideration, no Deeds were, and none could thereafter be, produced, the Decree of Certification having ſet aſide all Deeds and Titles which were not then actually in the Proceſs, wherefore the Diſpoſition was to be conſidered as merely voluntary, and conſequently fraudulent as againſt juſt Creditors.

II. That the Sum of 27215 *l.* ſubſcribed by the Secretary, was for the Company's Account, and could not be ſecured by Infeoftment to the Prejudice of lawful Creditors.

III. That the Company's allowing the Subſcribers to pay their Subſcriptions in old Bonds and Slips was a Fraud, becauſe it could not anſwer the End propoſed by the Indenture.

IV. That the taking *in* ſuch old Bonds and Slips from Stockholders of the Company, or from thoſe who purchaſed ſuch Bonds and Slips from Stockholders, was a Fraud, and was no valuable Conſideration for granting the Truſt Deed.

To theſe Exceptions it was anſwered for the Appellants.

Appellants Anſwers.

I. That the Appellants had produced all Infeoftments, and other Deeds granted to them, affecting the Company's Eſtates, *viz.* the ſaid Indenture, and the Diſpoſition and Infeoftments following thereupon, and the Decree of Certification *againſt them* could affect only ſuch Rights *as were veſted in them*, but could not defeat the Right of *Others*, who were not Parties to this Suit, and whoſe Titles the Appellants were not called upon to produce, nor had it in their Power ſo to do.

II. That as the Advance of Money, or the actual bringing in of the old Bonds and Slips to the Company, and not the Subſcription to the Propoſals, was the valuable Conſideration of the Truſt Deed and Infeoftment; and as Money was paid into the Company under the Subſcription of the Secretary, as well as of the other Subſcribers, the Truſt Deed and Infeoftment were equally onerous with reſpect to both.

III. That receiving Money to diſcharge old Bonds or Slips, or taking *in* the old Bonds and Slips, came juſt to the ſame Thing, and was one of the expreſs Conditions of the Propoſals.

IV. That if a Member of a Body Corporate advances Money to the Corporation, his being a Member of that Corporation, or a Stockholder, neither avoids nor weakens his Security, which is as legal, equitable, and favourable, as that of any other Creditor----And ſuch Loans, common in *Scotland*, as well as in *England*, have hitherto remained unimpeached.

26th of *July* 1737. Firſt Interlocutor appealed from.

The Lord Ordinary having conſidered the foregoing Debate, by his Interlocutor of this Date, SUSTAINED the Reaſon of Reduction, founded upon the Decree of Certification, relevant to reduce the Indenture dated the 18th of *January*, 1732, and the Diſpoſition of the 25th of *October*, 1732, and Infeoftment following thereon under which the Defenders *(now Appellants)* Claim; except as to the Intereſt of *Rowland Ainſworth*, *Samuel Grove*, and Sir *John Meres*, *(three other Defendants)* who have taken a Day to produce their Grounds of Debt, and appear not as yet to be concluded by it, and *decerned accordingly*: --And *ſeparatim* SUSTAINED the Reaſon of Reduction, as to the Sum of 27215 *l.* ſubſcribed by the Company's *Secretary*, and FOUND, the Company could not ſet up that Sum as a Debt, nor ſecure it by Infeoftment to the Prejudice of the Purſuers Anterior and lawful Debts, and ſo far alſo REDUCES and DECERNS: ---- And FOUND that the Company's entering into the ſaid Indenture with Sir *William Billers*, &c. to raiſe a Sum, not exceeding 100000 *l.* for Payment of the Debts the Company owed by Bond, and for carrying on their Works in *Scotland*, and yet by the Conditions thereto annexed, allowing the Subſcribers to pay their Subſcriptions by old Bonds or Slips, which could not anſwer the End propoſed in the ſaid Indenture, *was a Fraud*; and that ſuch Payment, by old Bonds or Slips, could not create an onerous Cauſe, to Support the Indenture and Diſpoſition aforeſaid in Behalf of any Stockholder of the Company, to the Hurt and Prejudice of the Purſuers, who were lawful anterior Creditors: And FOUND *the ſaid Reaſon of Reduction ſufficiently proven*; And therefore REDUCED the ſaid Indenture and Diſpoſition, and the Infeoftment following thereupon, in ſo far as the ſame are claimed under by any Stockholder at the Time, or Purchaſer of ſuch old Bonds and Slips from ſuch Stockholder, and DECERNS; reſerving to ſuch Subſcribers, as paid ready Money, to be farther heard on their Intereſts, as Accords: And finds no Neceſſity to adviſe the other Reaſons of Reduction and Anſwers thereto.

The Appellants gave in a Repreſentation complaining of this Interlocutor; to which the Reſpondents put in Anſwers; and the Cauſe being again heard by the ſaid Lord Ordinary, and the Reſpondents inſiſting, That the Truſt Infeoftment was void in Regard it did not particularly mention the Names and Deſcriptions of the Creditors, for whoſe Behoof the Infeoftment was granted, who could not therefore be made Parties, nor concluded by any Decree in this Action.

7th of *Feb.* 1737-8. 2d Interlocutor appealed from.

His Lordſhip did upon the 7th Day of *February*, 1737-8, pronounce the following Interlocutor, viz. *Having conſidered the Repreſentation and Anſwers, with the foregoing Debate*, adhered *to his former Interlocutor, as to the three Points therein determined*; but declared, He would hear Parties Procurators further, as to the Proof that old Bonds and Slips were retired in place of paying Money upon the Plan of the Subſcription mentioned in the Debate; *but* repells *the Reaſon of Reduction*, That the Diſpoſition in Queſtion, and Infeoftment following thereon, is null, as not mentioning the Names of the Perſons and Sums due ſeverally to them, in Reſpect the Names of Truſtees are therein contained, and the ſpecial Sum of 100000 *l.* *but* FINDS *the Purſuers having called the ſaid Truſtees, they were not bound to Notice, nor call theſe for whoſe Behoof the Truſt was created, and who, holding their Bonds by a blank Indorſement from a Servant of the Company, could not be ſo known, as to be made Parties to this Suit.*

The

The Appellants preferred a Petition to the Court, complaining of the ſaid Interlocutor of *July* 26. 1737, except as to that Part thereof which found it proven, *That old Bonds and Slips due to the Stockholders of the Company were brought in Payment of the Subſcriptions*, which the Appellants had no Occaſion to complain of, by Reaſon, That by the ſaid other Interlocutor of the 7th of *February*, 1737-8, *it was reſerved to them to be heard by* Council *upon that Point*; and alſo complaining of the ſaid Interlocutor of the 7th of *February* 1737-8, in ſo far as the former Interlocutor, *as to the three Points thereby determined*, is thereby adhered to.----And the Reſpondents preferred a Petition to the Court complaining of that Part of the ſaid Interlocutor of the 7th of *February*, which repells the Reaſon of Reduction, *That the Diſpoſition in Queſtion and Infeoftment following thereon is Null, as not mentioning the Names of the Perſons and Sums due ſeverally to them, in Reſpect the Names of the Truſtees are therein contained, and the ſpecial Sum of* 100000 l.

To which Petitions, Anſwers were ſeverally put in for both Parties.

The Lords, on Conſideration of the ſaid Petition preferred in the Name of the Appellants, and of the Anſwers put in for the Reſpondents, by their Interlocutor the 17th Day of *November*, 1738, ADHERED to that Part of the Lord Ordinary's Interlocutor, *ſuſtaining the Reaſon of Reduction founded on the Decree of Certification, relevant to reduce the Indenture, dated the 18th of* January, 1732, *and the Diſpoſition dated the 25th Day of* October, 1732, *under which the Defenders* (now Appellants) *Claim*, except as to the Intereſt of thoſe who have taken a Day to produce their Grounds of Debt.-----And remitted both Petitions and Anſwers to the Lord Ordinary, to hear Parties further on the other Points therein not already determined by the Lords; as alſo to hear them on any other Points in the Cauſe, on which no Judgment had been yet given by the Ordinary, and to determine or report.

17th of *Nov.* 1738. 3d Interlocutor appealed from.

The Appellants preferred another Petition to the Court, complaining of ſo much of the ſaid Interlocutor as adhered to that Part of the Lord Ordinary's Interlocutor, *which ſuſtained the Reaſon of Reduction founded on the Decree of Certification*; and thereby prayed their Lordſhips to find, *That the Creditors*, who are not made Parties to this Suit, and have not produced their Bonds or other Titles before the ſaid Decree of Certification was pronounced, *are intitled at any Time before a Decree of Reduction can be granted, to make themſelves Parties to this Suit, and to produce their Bonds and other Titles in ſupport of their Preference under the Infeoftments of the Appellants as their Truſtees, which was not affected by the ſaid Decree of Certification*----or at leaſt to allow the Appellants to be heard by Council on this Point, with the other Points remitted to be heard and determined by the ſaid Lord Ordinary.

12th of *Jan.* 1738-9. 4th Interlocutor appealed from.

The Conſideration of which Petition was alſo remitted to the Lord Ordinary.

His Lordſhip having heard both Parties by their *Council* upon the Merits of the Cauſe, made his Report to the whole Lords, and their Lordſhips by their Interlocutor of this Date, SUSTAINED the Objection made to the Diſpoſition dated the 25th Day of *October*, 1732, and Infeoftment following thereon, under which the Defenders (*now Appellants*) claim; viz,

1. *That it does not appear by the ſaid Diſpoſition and Infeoftments, that there was thereby any real Right created on the Eſtates of the York Building Company, or any of them in favour of any Perſons* certain *or for any* certain *or definite Sum*; and therefore find the ſaid Infeoftments void and null in Competition with the

2. Purſuers; --- and ADHERE to their Interlocutor dated the 17th of *November* laſt, *Suſtaining the Reaſon of Reduction founded on the Decree of Certification* relevant *to reduce the Indenture dated the 18th Day of January*, 1732, *and the Diſpoſition dated the 25th Day of October*, 1732, *under which the Defenders Claim*, except as to the Intereſt of thoſe

3. who have taken a Day to produce their Grounds of Debt; --- And they alſo SUSTAINED this Reaſon of Reduction, viz. *That there is no Enumeration of the Lands, Lordſhips and Baronies pertaining to the ſaid Company in the Precept of Seiſin in the ſaid Diſpoſition, nor in the Diſpoſition itſelf which was the only Warrant produced and publiſhed for*

4. *taking the ſaid Infeoftments*; --- and they alſo SUSTAINED this Reaſon of Reduction, viz. *That while the Purſuers were in the Courſe of obtaining an Adjudication againſt the Company*, which was obſtructed by the Company's taking a Term to produce a Progreſs, which they did not do, but ſuffered the Term to be circumduced, *the ſaid Company did, while that Term was current, grant the Diſpoſition in queſtion in prejudice of the Purſuers Diligence by Adjudication founded on an anterior and lawful Debt, contracted by the Company Anno* 1730; *by which the Company was bound to*

5. *infeoft the Purſuers in an annual Rent of* 3,600 *l.* relevant to reduce the Diſpoſition aforeſaid; ---- And alſo FOUND *that the Company could not ſet up the Sum of* 27,215 l. Sterling, *ſubſcribed in conſequence of their Order by their Secretary* Henry Strachey, *nor ſecure the ſame by Infeoftment to the Prejudice of the Purſuers, their anterior and lawful Creditors*, and therefore *in ſo far* SUSTAIN *the Reaſon of Reduction of the Indenture, Diſpoſition, and Infeoftments*

6. *aforeſaid following thereon*; and SUSTAIN this Reaſon of Reduction, viz. *That the allowing Sums ſubſcribed to be paid by old* Bonds *or* Slips, *by any Stockholder of the Company, to intitle them to New Bonds to be iſſued the 25th of* March, 1732, was a Fraud, and is relevant *to reduce the New Bonds, Indenture, Diſpoſition, and Infeoftments aforeſaid, ſo far as the ſame were given in Exchange for Old Bonds, at the Date of the ſuppoſed Subſcription, held by Perſons who then were Stockholders of the Company*; And FOUND the Purſuers *preferable to the Maills and Duties of the Company's Eſtates of* Mariſchal, Southesk, *and* Linlithgow, *at leaſt to the Extent of* 3600 l. Sterling, *yearly, being the annual Rent* in which the Company was *obliged to infeoft the Purſuers in virtue of the Contract* 1730 *aforeſaid, until the Company's Rights to theſe Eſtates ſhall be compleated by Infeoftment therein*, reſerving to themſelves then to conſider whether the Purſuer's Preference ſhall continue after ſuch Infeoftment ſhall be taken, or not; and REDUCE, PREFER, DECERN, and DECLARE accordingly.

The Appellants have appealed from the ſaid Interlocutor of the 26th of *July*, 1737, and Interlocutor of the 7th of *February*, 1737-8, adhering thereto, *as to the three Points therein determined*, and alſo from the ſaid other Interlocutors of the 17th of *November*, 1738, and the 12th of *January*, 1738-9, humbly praying that the ſame may be reverſed or varied; and that ſuch part of the Interlocutor of the 7th of *February*, 1737-8, as *repells the Reaſon of Reduction, viz.* That the Diſpoſition in queſtion, and Infeoftments following thereon is null, as not mentioning the Names of the Perſons and Sums due ſeverally to them, *may be affirmed*, for the following among other

REASONS.

I. That the Infeoftment is granted to Truſtees *named*, who are Perſons *certain* in whom the legal Intereſt is veſted, and for a Sum *certain*, viz. 100,000 *l.* and the particular Creditors have no immediate real *Lien* upon the Eſtates, but only an equitable Remedy againſt their Truſtees for Satisfaction.

II. Becauſe from the Nature of the Tranſaction, between the *Company*, the *Truſtees*, and the *Bond-Creditors*, it is evident the Bond-Creditors acted only *upon the Faith of the real Security, to be veſted in the Truſtees for their uſe*; and as the Bonds of a Company have a general Currency, and are made aſſignable by Law, it is as impoſſible for the *Company* or the *Truſtees* to ſet forth in whoſe Hands ſuch Bonds are, as it is for a *Banker* to ſhew who are poſſeſt of his out-ſtanding Notes; --- and to exclude the Proprietors of the Bonds, *by a Decree of Certification to which they were not made Parties*, from making out their Claims, becauſe the *Truſtees* could not comply *with what was not in their Power*, ſeems inconſiſtent with the Rules of Law, and againſt Equity.

III. For that the *Indenture* upon which the Creditors relied, contained a Covenant to grant a real Security, and did particularly ſet forth and enumerate the ſeveral Eſtates in *Scotland*, wherein the *Truſtees* were to be infeoft; and the Diſpotion granted purſuant to the ſaid Covenant, *reciting and referring* to this Indenture, and containing a Power of Attorney to infeoft the *Truſtees* in *all* the Company's Eſtates in *Scotland*, was a ſufficient Warrant for Livery of Seiſin in the ſeveral Eſtates particularly enumerated in that Indenture.

IV. The

Sir *William Billers*, Knight, *John Lawton* and *Nicholas Paxton*, Esqrs. Truſtees for certain Creditors of the Governor and Company of Undertakers for raiſing the *Thames Water* in *York Buildings*, } Appellants.

His Grace *Edward* Duke of *Norfolk*, Sir *Robert Sutton*, and Sir *Robert Clifton*, Knights of the *Bath*; Sir *Alexand. Murray* and Sir *Archibald Grant*, Barts. *George Wade*, Esq; Lieutenant-General of His MAJESTY's Forces; — and others, } Reſpondents.

The Caſe of the APPELLANTS.

To be heard at the Bar of the HOUSE *of* LORDS, *on* Wedneſday *the Eighteenth Day of* April 1739.

So much of the Several Interlocutors Complained of whereby the Court of Seſſion Sustained the Reasons of Reduction Mentioned in the Appellants Case 4 5 & the later part of 6 And also So much of the said Interlocutor whereby the Court of Seſſion hath refused to proceed Diſcuſſed and Declared Anent ing 6 Affirmed and as to the other Reasons of Reduction were not Neceſſary to be Advised or Determined in this Cauſe and therefore Ordered that So much of the said Several Interlocutors As Related to the last mentioned Reasons of Reduction Should be without Prejudice to any of the Parties to Insiſt upon the same Should Occaſion hereafter Arise to be Determined